



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18th STREET - SUITE 300  
DENVER, COLORADO 80202-2466  
<http://www.epa.gov/region08>

MAY 18 2006

Ref: 8ENF-W

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Richard Brannan, Chairman  
Northern Arapaho Business Council  
P.O. Box 396  
Fort Washakie, WY 82514

Re: Administrative Order  
Docket No. **SDWA-08-2006-0035**  
Northern Arapaho Utilities  
Ethete Public Water System  
PWS ID #085690002

Dear Chairman Brannan:

On October 7, 2004, the U.S. Environmental Protection Agency (EPA) sent a draft Compliance Assistance Plan ("CAP") for the Ethete drinking water treatment plant. The CAP included a list of the water system's violations over a 5-year period, compliance assistance tools to aid with compliance of the National Primary Drinking Water Regulations ("NPDWRs") associated with the violations, and a list of actions to be completed by the Utilities in order to return to compliance. The CAP was finalized on November 16, 2004, and established a 6-month implementation period which ended on May 16, 2005. At the close of the implementation period, EPA had found that the Northern Arapaho Utilities, as owner and operator of the public water system, did not comply with all the actions outlined in the CAP and continued to incur violations of the NPDWRs.

Due to continued noncompliance, and to the potential for impacts to public health on the Reservation from drinking water which does not meet all NPDWR requirements, enclosed you will find an Administrative Order (Order), which EPA has issued under the authority of the Safe Drinking Water Act (SDWA), 42 U.S.C. Section 300f et seq., and its implementing regulations, outlining violations of the NPDWRs.

If the Northern Arapaho Utilities complies with the enclosed Order for a period of at least twelve months, EPA may choose to close the Order. Violating the enclosed Order may lead to



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(1) a penalty of up to \$32,500 per day of violation of the Order, (2) a separate such penalty for violating the regulations themselves, and/or (3) a court injunction ordering you to comply.

If you would like additional information, please feel free to contact me directly at (800) 227-8917, extension 6051 or (303) 312-6051. If your staff have questions, the most knowledgeable people on my staff regarding these issues are Melanie Wasco, Environmental Protection Specialist, at (800) 227-8917, extension 6540, or (303) 312-6540, or if your attorneys have legal questions, Michelle Marcu, Enforcement Attorney, at the above 800 number, extension 6921, or at (303) 312-6921.

We urge your prompt attention to this matter.

Sincerely,



Carol Rushin  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosure

cc: Gerald Redman, Manager  
Ethete Public Water System  
Northern Arapaho Utilities

Don Aragon, Executive Director  
Wind River Environmental Quality Commission



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2006 MAY 18 AM 9:05

IN THE MATTER OF )

Northern Arapaho Utilities )  
Ethete Water Treatment Plant, Operator )  
Box 8583 )  
Ethete, WY 82520 )  
PWS ID# 085690002 )

Respondent )

Proceedings under section 1414(g) )  
of the Safe Drinking Water Act, )  
42 U.S.C. § 300g-3(g) )

) ADMINISTRATIVE ORDER

) Docket No. SDWA-08-2006-0035

FILED  
EPA REGION VIII  
HEARING CLERK

The following findings are made and order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) in the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g) as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. The Northern Arapaho Utilities ("Respondent") is a tribal agency under the laws of the Northern Arapaho Business Council and is therefore a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.
2. Respondent operates the Ethete Water System ("System"), located on the Wind River Reservation, Ethete, Wyoming, that provides water for human consumption. The System serves approximately 2,500 residents annually through 330 service connections.

3. The System is a "public water system" and a "community water system" within the meaning of the Act and the regulations. 40 C.F.R. § 141.2.

4. Respondent operates the System and is therefore a "supplier of water" within the meaning of the Act and the regulations. 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is, therefore, required to comply with the Act and regulations. 42 U.S.C. § 300g, and 40 C.F.R. part 141.

5. The System is supplied solely by surface water from the South Fork of the Little Wind River and, when needed, the North Fork of Little Wind River.

#### FINDINGS OF VIOLATION

1. The System exceeded the copper action level in June 1999 which triggered multiple requirements in 40 C.F.R. part 141 subpart I, including, but not limited to, water quality parameter monitoring and reporting requirements (40 C.F.R. §§ 141.87, 141.89 and 141.90), source water monitoring and reporting requirements (40 C.F.R. §§ 141.88, 141.89 and 141.90), making a source water treatment recommendation to EPA within 6 months after exceeding the lead or copper action level (40 C.F.R. §§ 141.81 (e) (1) and 141.83) and recommending corrosion control studies within 6 months after exceeding the lead or copper action level (40 C.F.R. § 141.82(a)). The System failed to comply with the requirements triggered by the monitoring results after exceeding the copper action level in June 1999 through December 2004, and therefore, was in continuous violation of the Act and the regulations from June 1999 through December 2004. Respondent submitted monitoring results for lead and copper to EPA for January - June 2004 and July - December 2004, which were below the action levels for both lead and copper (40 C.F.R. § 141.80(c)). Based upon these results, Respondent is not required to conduct source

water monitoring, monitor for water quality parameters, make a source water treatment recommendation or install optimal corrosion control treatment for lead or copper at this time.

2. The regulations require that a system conduct monthly monitoring for disinfection byproduct precursors, including "paired samples" of total organic carbon (TOC) in source water and treated water, and alkalinity in the source water. More specifically, a system must collect one paired sample of TOC and one source water alkalinity sample per month per plant (40 C.F.R. § 141.132(d)). The System failed to collect such samples during January - December 2004, January - July 2005, September 2005, and March 2006, and, therefore, violated the Act and the regulations during each of these months.

3. The regulations require that information from the monthly monitoring samples stated above be reported to EPA each quarter. (40 C.F.R. § 141.134(a)). The System failed to report such information for all 4 quarters during 2004 and the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2005, reported only the month of August results for 3<sup>rd</sup> quarter 2005, and reported only the months of January and February results for 1<sup>st</sup> quarter 2006, and, therefore, violated the Act and the regulations during each of these quarters.

4. The regulations require all subpart H Public Water Systems using conventional filtration treatment to determine enhanced coagulation compliance by calculating the TOC removal percentage between the source water and the combined filter effluent and report this information to EPA within 10 days following the end of each quarter. (40 C.F.R. § 141.135(c)). The System failed to report such information and

thus provided inadequate reporting to EPA for the 1<sup>st</sup> quarter of 2006, and, therefore, violated the Act and the regulations.

5. The regulations (see 40 C.F.R. § 141.132(b)) require the collection of one water sample from the distribution system during each quarter to determine compliance with the maximum contaminant level ("MCL") for disinfection byproducts (see 40 C.F.R. § 141.64). The System failed to take such samples during the 3<sup>rd</sup> quarter of 2004, and 2<sup>nd</sup> quarter of 2005, and, therefore, violated the Act and the regulations.

6. The regulations require systems to report information including the number of disinfection byproducts samples taken during the quarter; locations, date, and results of samples taken; the arithmetic average of the results; and whether the MCL for disinfection byproducts was violated, to EPA within 10 days after the end of each quarter. (40 C.F.R. § 141.134). The System failed to report such information for the 3<sup>rd</sup> quarter of 2004, and 2<sup>nd</sup> quarter of 2005, and reported results late for the 1<sup>st</sup> quarter of 2004, and the 1<sup>st</sup> quarter of 2005, and, therefore, violated the Act and the regulations.

7. The regulations require that the turbidity level of representative samples of a system using a surface water source and conventional filtration must be less than or equal to 0.5 Nephelometric Turbidity Units ("NTU") in at least 95 percent of the measurements taken each month. (40 C.F.R. § 141.73(a)(1)). Monitoring results from the Ethete PWS showed that the allowed turbidity limit was exceeded during May 2003, thus violating the Act and the regulations. Please note, effective January 1, 2005, the regulations changed the turbidity level of representative samples from 0.5 NTU to 0.3 NTU in at least 95 percent of the measurements taken each month. (40 C.F.R. §§ 141.502 and 141.551(a)).

8. The regulations require a system to monitor monthly for total coliform. (40 C.F.R. § 141.21). The System failed to monitor for total coliform in August, 2004, and, therefore, violated the Act and the regulations.

9. The regulations require that systems using a surface water source are required to monitor for residual disinfectant concentration (or heterotrophic plate count) in the distribution system (40 C.F.R. § 141.74). The System failed to monitor for chlorine residual in August 2004, and, therefore, violated the Act and the regulations.

10. The regulations require systems that collect at least two monthly total coliform routine samples to collect a set of three repeat samples within 24 hours of being notified of a total coliform positive routine sample (40 C.F.R. § 141.21(b)). The System failed to collect a set of three repeat samples after the February 2002 total coliform positive routine sample, and, therefore, violated the Act and the regulations.

11. The regulations require systems that collect fewer than five routine total coliform samples per month and have one or more total coliform positive samples to collect at least five routine samples during the next month that the system provides water to the public (40 C.F.R. § 141.21(b)(5)). The System failed to collect the required number of samples (only collected four out of five routine samples) in August 2002 after a total coliform positive sample in the preceding month, and, therefore, violated the Act and the regulations.

12. The regulations impose and define the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as no more than one sample collected during the month may be positive for total coliform

bacteria (40 C.F.R. § 141.63(a)(2)). The System exceeded the MCL for total coliform bacteria in July 2002, and, therefore, violated the Act and the regulations.

13. The regulations require systems that have exceeded the MCL for total coliform to report the violation to EPA no later than the end of the next business day after it learns of the violation (40 C.F.R. § 141.21(g)(1)). The System failed to report to EPA the total coliform MCL violation in July 2002, and, therefore, violated the Act and the regulations.

14. The regulations require a system to monitor annually for nitrate. (40 C.F.R. § 141.23(d)). The System failed to monitor for nitrate in 2001 and 2003, and, therefore, violated the Act and the regulations. The System is currently in compliance with the nitrate monitoring requirements, as it monitored for nitrate in 2004 and 2005.

15. The regulations require a system to monitor annually for volatile organic contaminants ("VOCs"). (40 C.F.R. § 141.24(f)). The System failed to monitor for VOCs in 2001 and 2003, and, therefore, violated the Act and the regulations. The System is currently in compliance with the VOC monitoring requirements, as it monitored for VOCs in 2004 and 2005.

16. The regulations require a system to notify the public of any violations of monitoring requirements (40 C.F.R. § 141.201). On June 2, 2005, the System issued a public notice for all violations for which public notice was required; however the public notice was delinquent by as much as two years for some of the violations, and therefore, violated the Act and the regulations. Although the System has not provided public notice for some of the other violations contained in this order, the regulations provide one year for the System to provide public notice of these violations (see 40 C.F.R. § 141.204).



17. The regulations require a system to report any failure to comply with a coliform monitoring requirement to EPA within 10 days, and report other NPDWR violations to EPA within 48 hours. (40 C.F.R. §§ 141.21(g)(2) and 141.31(b)). The System failed to report the coliform monitoring violations and other violations detailed above to EPA, and, therefore, violated the Act and the regulations.

### ORDER

Based on the findings of violations above, the Respondent is ordered to do the following:

1. Upon the effective date of this order, Respondent shall comply with the requirements specified in 40 C.F.R. part 141 subpart I, including the monitoring requirements specified in 40 C.F.R. § 141.86.
2. Upon the effective date of this order, monitor monthly for disinfection byproduct precursors, including “paired samples” of total organic carbon (TOC) in source water and treated water, and alkalinity in the source water (40 C.F.R. § 141.132(d)); and report analytical results and compliance calculations to EPA within the first 10 days of the end of the monitoring period [40 C.F.R. §§ 141.134(a) and (d)].
3. Upon the effective date of this order, monitor quarterly for disinfection byproducts in the distribution system (40 C.F.R. § 141.132(b)) to determine compliance with the disinfection byproducts MCL (40 C.F.R. § 141.64); and report analytical results and compliance calculations to EPA within the first 10 days of the end of the monitoring period (40 C.F.R. §§ 141.134(a) and (b)).
4. Upon the effective date of this order, calculate the TOC removal percentage between the source water and the combined filter effluent to determine the enhanced

coagulation calculation and report this information to EPA within 10 days following the end of each quarter. (40 C.F.R. § 141.135(c)).

5. Upon the effective date of this order, monitor the combined filter effluent water for turbidity and ensure the turbidity levels of representative samples are less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month (40 C.F.R. § 141.551(a)); and report the results to EPA within the first 10 days following the end of the monitoring period (40 C.F.R. § 141.75).

6. Upon the effective date of this order, comply with the routine and repeat total coliform monitoring requirements (40 C.F.R. § 141.21); and report analytical results to EPA within the first 10 days following the month in which sample results are received (40 C.F.R. § 141.31(a)).

7. Upon the effective date of this order, monitor for residual disinfectant concentration (or heterotrophic plate count) in the distribution system (40 C.F.R. § 141.74); and report analytical results together with the corresponding total coliform results to EPA within 10 days after the end of each month (40 C.F.R. § 141.75).

8. Upon the effective date of this order, comply with the total coliform MCL (40 C.F.R. § 141.63(a)); and report any exceedance of the MCL to EPA no later than the end of the next business day after it learns of the violation (40 C.F.R. § 141.21(g)(1)).

9. Upon the effective date of this order, comply with the nitrate monitoring requirements (40 C.F.R. § 141.23(d)); and report analytical results to EPA within the first 10 days following the month in which sample results are received (40 C.F.R. § 141.31(a)).

10. Upon the effective date of this order, comply with the VOC monitoring requirements (40 C.F.R. § 141.24(f)); and report analytical results to EPA within the first 10 days following the month in which sample results are received (40 C.F.R. § 141.31(a)).

11. Upon the effective date of this order, provide public notice in the manner specified in the regulations. Such notice shall contain all of the information required by the regulations (40 C.F.R. §§ 141.201, 141.204 and 141.205). Submit a copy of the public notice to EPA within 10 days of completion of the public notice (40 C.F.R. § 141.31(d)).

12. Upon the effective date of this order, report any failure to comply with coliform monitoring requirements to EPA within 10 days (40 C.F.R. § 141.21(g)(2)).

13. Except where a different reporting period is specified above, upon the effective date of this order, report any failure to comply with any NPDWR to EPA within 48 hours (40 C.F.R. § 141.31(b)). Send any reports to EPA required in this order by certified mail to:

U. S. EPA Region 8 (8P-W-MS)  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

#### GENERAL PROVISIONS

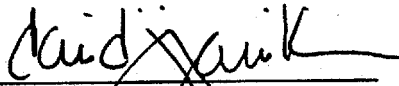
Issuance of this order does not constitute a waiver, suspension, or modification of any Federal law or regulation, nor is it an election by EPA to forgo any civil or criminal action otherwise authorized by law.

Violation of any term of this order may result in an administrative civil penalty of up to \$27,500, or a civil penalty of not more than \$32,500 per day of violation assessed by the U.S. District Court. (42 U.S.C. § 300g-3(g)(3)(B) or (C)).

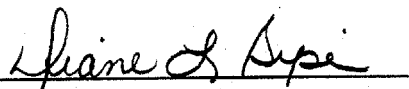
Violation of any requirement of the SDWA or its implementing regulations may subject Respondent to a civil penalty of not more than \$32,500 per day of violation assessed by the U.S. District Court. (42 U.S.C. § 300g-3(b)).

This order is effective upon receipt.

Issued this 18<sup>th</sup> day of May, 2006.



Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice



Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice